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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Wilburton and Okemah, Oklahoma))

MB Docket No. _____
RM- _____

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Office of Secretary
Attn: Chief, Audio Division
Media Bureau

PETITION FOR RULE MAKING

Little Dixie Radio Inc., licensee of KESC(FM), Channel 279C1, Wilburton, Oklahoma, and KMCO(FM), Channel 267C1, McAlester, Oklahoma; KESC Enterprises, Inc., proposed assignee of KESC(FM) (*see* FCC File No. BALH-20040610ABH); and Southeastern Oklahoma Radio, LLC, proposed assignee of KMCO(FM) (*see* FCC File No. BALH-20040610ABL) (jointly, "Petitioners"), by their undersigned attorneys and pursuant to Section 1.401 of the Commission's rules, hereby petition the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to reallocate Channel 279C1 from Wilburton, Oklahoma to Okemah, Oklahoma and to modify the license of KESC to specify Okemah as its community of license and to reallocate Channel 267C1 from McAlester to Wilburton and to modify the license of KMCO to specify Wilburton as its community of license.^{1/} Specifically, Petitioners request that the FM Table of Allotments be amended as follows:

^{1/} This Petition does not propose a change in channel, class, or reference coordinates for any of the 290 vacant nonreserved band FM allotments scheduled for Auction No. 37. Accordingly, the current freeze on the filing of such petitions is inapplicable to this Petition. *See* Public Notice, *Auction No. 37 Freezes Announced for FM Minor Change Applications and Certain Rulemaking Filings*, DA 04-1642, released June 7, 2004.

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<u>Community</u>	<u>Present</u>	<u>Proposed</u>
McAlester, Oklahoma	267C1, 286A	286A
Okemah, Oklahoma	--	279C1
Wilburton, Oklahoma	279C1	267C1

In support of this Petition, Petitioners state as follows:

Technical Considerations

1. As demonstrated by the Engineering Statement attached hereto as Exhibit A, each of the requested reallocations is mutually exclusive with its respective currently authorized allotment. Therefore, each of the proposed reallocations complies with the requirements of Section 1.420(i) of the Commission's rules and is not subject to any competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870(1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Each of the proposed reallocations will provide the requisite 70 dBu coverage to the respective principal communities of Okemah and Wilburton. *See* Exhibit A. Moreover, the proposed reallocation of Channel 279C1 to Okemah will enable KESC to provide the community of Okemah, a city of 3,038 people that is not located within any Urbanized Area, with its first local aural transmission service. Because Channel 267C1 will be reallocated to Wilburton, the reallocation to Okemah will not deprive Wilburton of local broadcast service.

2. Finally, the reallocation to Okemah will result in a net gain in reception service to 116,671 people, while the vast majority of the loss area will continue to be well served. *See* Exhibit A at 5. Because the proposed reallocation to Wilburton does not involve a site change, no existing listeners to KMCO will be deprived of reception service. *Id* at 4.

Policy Considerations

3. Reallocation of Channel 279C1 to Okemah and of Channel 267C1 to Wilburton will result in a preferential arrangement of allotments pursuant to the Commission's change of

community procedures.^{2/} Pursuant to those procedures, the existing arrangement of allotments must be compared with the proposal using the FM allotment priorities: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters.^{3/}

4. In this case, the first two allotment priorities are not involved as no white or gray areas will be created or eliminated. As noted above, however, the community of Okemah currently has no local aural transmission service. Moreover, because Channel 267C1 will be reallocated to Wilburton and KMCO's license modified to specify that community, Wilburton will retain local aural transmission service. McAlester, which will lose service from KMCO, will continue to be served by commercial stations KNED(AM), KTMC(AM), and KTMC-FM and noncommercial educational FM station KBCW(FM). Since the proposal will fulfill Priority 3 of the Commission's allotment priorities by providing Okemah with its first local transmission service, while retention of the allotments as currently authorized will only trigger Priority 4, grant of the proposal will result in a preferential arrangement of allotments and is therefore in the public interest. Grant of the proposal is also consistent with Commission precedent. *See, e.g., Savannah, Georgia*, DA 03-2715 (released Sept. 5, 2003) (reallocating sole local service from Springfield to Tybee Island, Georgia, as latter community's first local service and reallocating a station from Savannah, Georgia to Springfield as replacement service where Savannah would retain local service), *Glens Falls, New York*, DA 03-2351 (released July 24, 2003) (reallocating sole local service from Queensbury to Malta, New York, as latter community's first local service

^{2/} *See Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

^{3/} *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), recon. denied, 56 RR 2d 448 (1983). Co-equal weight is given to priorities (2) and (3).

and reallocating a station from Glens Falls, New York to Queensbury as replacement service where Glens Falls would retain local service).

5. Moreover, additional public interest factors under Priority 4 support grant of this proposal. Specifically, the allotment of Channel 279C1 to Okemah and the modification of the license of KESC accordingly will increase the population receiving 1 mV/m service from the station from 134,922 to 251,593, a net increase in coverage of 116,671 people or 186%. *See* Exhibit A at 5 and Figure 8. While the reallocation will result in some loss of 60 dBu service, the vast majority of this area will continue to be well served, with 99.7% (54,462) of the people continuing to receive at least five full-time reception services and the remaining 0.3% (167) continuing to receive four full-time reception services. *Id.*^{4/} There will be no loss in area served. This minor level of service loss is consistent with past cases in which applicants have been permitted to change their communities of license. *See, e.g., Clinton and Okarche, Oklahoma*, 14 FCC Rcd 3554 (MB 1999) (granting proposed reallocation though 54,423 people would lose service, of which 10,369 would be left with four services or less).

6. The City of Okemah has the social, economic, and cultural characteristics of a community and warrants a first local aural transmission service. Okemah, with a population of 3,038 according to the 2000 U.S. Census, is the county seat of Okfuskee County. The city was named after a Kickapoo Indian Chief, Chief Okemah, in April 1902 and was incorporated in 1903. *See* Exhibit B hereto. It is the hometown of folk singer, Woody Guthrie, and home to the annual Woody Guthrie Free Folk Arts Festival, which brings thousands of music lovers and folk entertainers to Okemah each year, as well as the annual Okemah Pioneer Days Celebration hosted by the local Community Improvement Association. *Id.* Okemah is governed by a

^{4/} The majority of the gain area is well served, with only 1.3% currently receiving less than five reception services. *See* Exhibit A at Figure 8.

manager and five council members and has its own police and fire departments as well as its own post office and zip code (74859). *Id.*^{5/} Moreover, the city provides water and sewer service and operates three schools, Okemah Oakes Elementary, Okemah Middle School, and Okemah High School, through the Okemah Public School District. *Id.*

7. Okemah has its own hospital, a public library, and a weekly newspaper, the Okemah News Leader. *Id.* The city also offers many recreational outlets, including Okemah City Lake, a nine-hole golf course, two city parks, a city-owned rodeo arena and swimming pool, and the Okemah Recreational Complex, which contains four baseball/softball fields, a walking trail, and an educational outdoor classroom and wetland area. *Id.* In addition, the city is home to numerous churches, including Okemah Freewill Baptist Church and Okemah Landmark Missionary Baptist Church, as well as several civic organizations, including the Okemah Alumni Association, the Okemah Golf Club, Okemah Little League, Okemah On Stage, the Okemah Public School Foundation, and the Okemah Roundup Club. *Id.*

8. The community includes numerous businesses that serve its residents, such as Brick Street Café, Ed's Electronics, Okemah National Bank, Okemah Construction Inc., Okemah Chiropractic Clinic, Okemah Pharmacy, Okemah Insurance Agency, Okemah Realty, and Red and White Grocery and Market. *Id.* Awarding a radio station as a first local service to a community the size of Okemah and with its indicia of community status is entirely consistent with Commission precedent. *See, e.g., Conway and Vilonia, Arkansas*, 18 FCC Rcd 25634 (MB 2003) (granting request for reallotment of channel from Conway to Vilonia, Arkansas, an incorporated community of 2,106 people with a mayor/council form of government, its own post office and zip code, police and fire departments, a library, schools, water and sewer services, and

^{5/} Nearby Mason, a tiny place unrecognized by the U.S. Census, and the town of Bearden, a community of 140 people, share this zip code and receive their mail in Okemah.

numerous churches, businesses and medical services), *Tallapoosa, Georgia*, DA 03-3651 (released Nov. 17, 2003) (granting request for allotment of channel to Tallapoosa, Georgia, an incorporated community of 2,789 people with its own local government, police and fire departments, schools, a post office and its own zip code, and numerous churches and businesses).

9. Finally, neither the City of Okemah nor the City of Wilburton is located within any Urbanized Area nor will KESC provide a 70 dBu signal to 50% or more of any Urbanized Area following the move. Accordingly, the instant reallocation request does not constitute an attempted migration of a rural station to an urban area, and a *Huntington-Tuck* analysis is not required.^{6/}

10. If the proposal set forth herein is adopted, Petitioners will expeditiously submit minor change applications for construction permits specifying the new facilities as requested herein, and once the construction permits are granted, will proceed promptly to file applications for covering licenses.

^{6/} See *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

Conclusion

Grant of the instant proposal will result in a preferential arrangement of allotments as it will permit KESC(FM) to provide a first local aural transmission service to Okemah, a community currently without such service, without depriving Wilburton of local transmission service. For these reasons, Petitioners respectfully request that the Commission promptly initiate the rule making requested herein to amend Section 73.202(b) of the Commission's rules, the Table of Allotments for FM Broadcast Stations, to reallocate Channel 279C1 from Wilburton, Oklahoma to Okemah, Oklahoma, as the latter community's first local aural transmission service and to reallocate Channel 267C1 from McAlester to Wilburton.

Respectfully submitted,

LITTLE DIXIE RADIO INC.

By: _____
Title: _____

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SOUTHEASTERN OKLAHOMA RADIO, LLC

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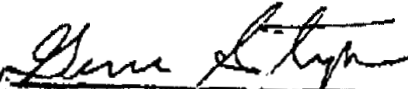
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SOUTHEASTERN OKLAHOMA RADIO, LLCBy: _____
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Dated: June 23, 2004

EXHIBIT A

TECHNICAL EXHIBIT
IN SUPPORT OF
A PETITION FOR RULE MAKING
TO AMEND THE FM TABLE OF ALLOTMENTS
WILBURTON AND OKEMAH, OKLAHOMA

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of FM station KESC (herein "Petitioner") in support of a Petition for Rule Making ("Petition") to amend Section 73.202(b) by the reallocation of channel 279C1 from Wilburton to Okemah, Oklahoma and the modification of the license of KESC on channel 279C1 at Wilburton, Oklahoma, accordingly (BLH-20020513AAT). As the requested change to channel 279C1 at Okemah is mutually exclusive with the present allotment of channel 279C1 at Wilburton, Petitioner invokes the provisions of Section 1.420(i).

In order to provide a replacement service at Wilburton, the licensee of KMCO on channel 267C1 at McAlester, Oklahoma requests the reallocation of channel 267C1 from McAlester to Wilburton and the modification of KMCO's license accordingly.

The following is a summary of the reallocation proposal:

- The city of Okemah, Oklahoma (2000 Census population 3,038) will be provided with its first local aural transmission service.
- The proposal will not remove the only local service at Wilburton, Oklahoma (2000 population 2,972) as KMCO on channel 267C1 at McAlester, Oklahoma will be reallocated from McAlester to Wilburton, Oklahoma.
- The number of persons within the KESC 1 mV/m contour will increase from 134,922 persons to 251,593 persons, and there will be a "net" increase in 1 mV/m coverage to 116,671 persons.
- Okemah is not located within any Urbanized area as defined by the 2000 U.S. Census.

Proposed Change in Table of Allotments

Station KESC is currently licensed (BLH-20020513AAT) to operate on channel 279C1 at Wilburton, Oklahoma with an effective radiated power (ERP) of 100 kW and an antenna height above average terrain (HAAT) of 185 meters. Wilburton city is located in Latimer County, Oklahoma and has a 2000 U.S. Census population of 2,972 persons. Wilburton currently has no other local FM or AM services. However, the proposal will not remove the only local service at Wilburton as licensed (BMLH-20020513AAR) FM station KMCO at McAlester, Oklahoma will be reallocated from McAlester to Wilburton. Furthermore, McAlester, which is located in Pittsburgh County and has a 2000 Census population 17,783 persons, will not be deprived of its sole existing service as FM stations KBCW on channel 220A and KTMC on channel 286A and fulltime AM stations KNED on 1150 kHz and KTMC on 1400 kHz are assigned to McAlester.

Okemah city, Oklahoma is located in Okfuskee County and has a 2000 U.S. Census population of 3,038 persons. Okemah has no local FM or AM service and, therefore, Petitioner's proposal would bring first local aural broadcast service to Okemah.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
McAlester, Oklahoma	267C1, 286A	286A
Okemah, Oklahoma	--	279C1
Wilburton, Oklahoma	279C1	267C1

Compliance With FCC Rules

The attached Figure 1 is a tabulation of required separations pertinent to use of channel 279C1 at Okemah. The allotment reference site complies with the Commission's minimum distance separation requirements contained in section 73.207 to all existing, authorized and proposed stations and allotments.

Operation from the allotment reference site will provide the requisite city grade signal to all of Okemah.¹

Figure 2 is a map showing the area to locate channel 279C1 at Okemah in compliance with the Commission's minimum distance separation requirements and city coverage requirements based on maximum Class C1 facilities (ERP 100 kW/HAAT 299 m). The Okemah city limits shown on Figure 2 were obtained from a map contained in the 2000 U.S. Census of Population.

Pursuant to Section 1.420(i), the Commission will consider petitions to modify the license/construction permit of an FM station to specify a new community if the proposed allotment would be mutually exclusive with the present assignment. As the entire area to locate for channel 279C1 at Okemah depicted on Figure 2 would be short-spaced to the licensed KESC operation on channel 279C1, including the channel 279C1 reference site, the new allotment is mutually exclusive with the existing allotment.

Wilburton, Oklahoma will not be deprived of its sole existing local service as KMCO on channel 267C1 at McAlester, Oklahoma will be reallotted from McAlester to Wilburton. No change in KMCO's presently licensed transmitter site is proposed (BMLH-20020513AAR). The attached Figure 3 is a tabulation of required separations pertinent to use of channel 267C1 at Wilburton from the licensed KMCO transmitter site. The licensed KMCO transmitter site complies with the Commission's minimum distance separation requirements contained in section 73.207 to all existing, authorized and proposed stations and allotments.²

Figure 4 is a map demonstrating that operation of KMCO on channel 267C1 at Wilburton will comply with the FCC's city coverage requirements. Specifically, Figure 4 depicts the 70 dBu contours for KMCO based on its licensed facilities (ERP

¹ The coordinates for channel 279C1 at Okemah are 35-14-22 North Latitude, 96-18-48 West Longitude.

² The coordinates for KMCO's licensed operation are 34-59-13 North Latitude, 95-42-10 West Longitude.

100 kW/HAAT 188 meters) and presuming uniform terrain (FCC allotment stage requirement) and actual terrain (FCC application stage requirement). As shown, operation from the licensed KMCO site will provide the requisite city grade signal to Wilburton. The Wilburton city limits shown on Figure 4 were obtained from a map contained in the 2000 U.S. Census of Population.

Pursuant to Section 1.420(i), the Commission will consider petitions to modify the license/construction permit of an FM station to specify a new community if the proposed allotment would be mutually exclusive with the present assignment. As there will be no change in the KMCO transmitter site or channel allotment (267C1) the new allotment at Wilburton is mutually exclusive with the existing allotment at McAlester.

Urbanized Area Considerations

Okemah is not located within any Urbanized area as defined by the 2000 Census. Furthermore, the 70 dBu contour for the proposed channel 279C1 operation at Okemah will not encompass any portion of an Urbanized Area.

Gain and Loss Areas and Available Aural Services

Figure 5, attached, is a map showing the FM 1 mV/m primary service contours for the licensed KESC operation on channel 279C1 at Wilburton and the proposed KESC channel 279C1 allotment at Okemah. Maximum C1 facilities and uniform terrain were utilized. The 1 mV/m "gain" and "loss" areas are also indicated.

It is noted that there will be no change in KMCO's presently licensed site or facilities (channel 267C1, ERP 100 kW/HAAT 188 m). Therefore, there will be no loss or gain in reception service for the proposed KMCO operation on channel 267C1 at Wilburton.

Figure 6, attached, is a map showing the FM 1 mV/m primary service contours for the licensed KESC operation on channel 279C1 at Wilburton and the proposed channel 279C1 allotment at Okemah. Maximum Class C1 facilities and uniform terrain were utilized. The 1 mV/m "gain" and "loss" areas are also indicated. Also shown are other aural (AM, FM) services available to the areas within the 1 mV/m contours.³ Figure 7 tabulates the AM and FM stations whose contours are shown on Figure 6. For FM stations the 1 mV/m contour is depicted, and for AM stations the nighttime-interference-free contour (NIF) is shown. Numbers indicate the number of available aural services.

As indicated on Figure 6, the gain area includes an area receiving four (4) aural services which encompasses 245 square kilometers and contains 2,290 persons. The remaining gain area receives five (5) or more aural services and is considered well-served. The loss area includes an area receiving four (4) aural services which encompasses 249 square kilometers and contains 167 persons. The remaining loss area receives five (5) or more aural services and is considered well-served.⁴

Population and Area within Gain and Loss Areas

Figure 8 is a tabulation of the land areas and estimated populations within the 1 mV/m FM primary service contours for the licensed KESC operation on channel 279C1 at Wilburton and the proposed channel 279C1 allotment at Okemah. Also tabulated are the gain, loss and "net" gain areas and the results of the reception service analyses for these areas. Adoption of the Petitioner's proposal will increase the number of persons within the KESC 1 mV/m contour from 134,922 persons to 251,593 persons and will result in a "net" increase in 1 mV/m coverage to 116,671 persons.

³The determination of available reception services was based on the criteria set forth in footnote 1 of the Notice of Proposed Rule Making in MM Docket No. 96-219 (DA 96-1774; adopted October 25, 1996, released November 1, 1996).

⁴ See Report and Order in MM Docket No. 97-242 (RM-9192, DA 98-190) at paragraph 3 (loss area will continue to receive at least three full time aural services which is considered to be well served).

Coverage Contours

The FM predicted coverage contours were calculated in accordance with the provisions of Section 73.313, except that uniform terrain was presumed in all directions. Distances to AM contours were based on either nondirectional radiation pattern values or standard radiation pattern values obtained from the FCC's AM database. FCC Figure M-3 conductivity employed along all azimuths.

Population and Area

The population within each FM primary service contour (1 mV/m) and each gain, loss, reception and interference area was calculated using a computer program that utilizes the 2000 U.S. Census database of "population centroids". The program adds the populations of those U.S. Census designated areas whose centroid was within each service area. The area within each FM primary service contour was calculated using a root mean square algorithm.

Conclusion

Channel 279C1 can be reallocated from Wilburton, Oklahoma to Okemah, Oklahoma in compliance with all applicable Commission Rules. The proposal will result in first local aural service to Okemah. Wilburton will not be deprived of its only local service as KMCO on channel 267C1 can be reallocated from McAlester to Wilburton in compliance with all applicable Commission rules. McAlester will not be deprived of its sole existing service as FM stations KBCW on channel 220A and KTMC on channel 286A and fulltime AM stations KNED on 1150 kHz and KTMC on 1400 kHz are assigned to McAlester. The number of persons within the KESC 1 mV/m contour will increase from 134,922 persons to 251,593 persons, and there will be a "net" increase in 1 mV/m coverage to 116,671 persons. Therefore,

Petitioner requests the reallocation of channel 279C1 to Okemah and the modification of the Petitioner's license to specify operation on channel 279C1 at Okemah.



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